

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

BESSIE EARL BISHOP,

Plaintiff,

v.

MITCH MURCH'S MAINTENANCE  
MANAGEMENT CO.,

Defendant.

No. 4:11-CV-22 CAS

**MEMORANDUM AND ORDER**

Before the Court is plaintiff's response to the Court's March 22, 2011 Order to Show Cause as to why this action should not be dismissed as time-barred and for her failure to exhaust administrative remedies. Having reviewed plaintiff's response and the corresponding record, the Court will dismiss the instant action pursuant to 28 U.S.C. § 1915.

Plaintiff brings this action under the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621, *et seq.*, for alleged age discrimination in the workplace. As the Court noted in its Order to Show Cause, although plaintiff submitted a right to sue notice from the Equal Employment Opportunity Commission to the Court, she did not file her action within ninety days of receiving her right to sue, as required under the statute.<sup>1</sup> *See, e.g., Braxton v. Bi-State Development Agency*, 728 F.2d 1105, 1108 (8th Cir. 1984); *Williams v. Thompson Corp.*, 383 F.3d 789, 790-91 (8th Cir. 2004); *Luckett v. Herbster-Hellweg Painting*, 2008 WL 2620894 at \*1 (E.D. Mo. June 27, 2008); *McIntosh v. Ameren UE*, 2009 WL 3754158 at \*2 (E.D. Mo. November 5, 2009). In her response to the Court, plaintiff has not articulated any reason she could not have complied with the limitations

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<sup>1</sup>The EEOC right to sue letter was mailed to plaintiff on September 16, 2010. Plaintiff filed the instant lawsuit on January 5, 2011, almost three weeks past the ninety-day period.

period. As such, the Court is compelled to dismiss the instant lawsuit for failure to file within the statute of limitations, pursuant to 28 U.S.C. § 1915. E.g., Myers v. Vogel, 960 F.2d 750, 751 (8th Cir. 1992).<sup>2</sup>

Accordingly,

**IT IS HEREBY ORDERED** that the Clerk shall not issue process or cause process to be issued on plaintiff's complaint as it is subject to dismissal under 28 U.S.C. § 1915 for plaintiff's failure to timely file the instant lawsuit.

A separate Order of Dismissal shall accompany this Memorandum and Order.



**CHARLES A. SHAW**  
**UNITED STATES DISTRICT JUDGE**

Dated this 27<sup>th</sup> day of May, 2011.

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<sup>2</sup> Although plaintiff has included with her complaint a copy of a notice of right to sue from the Missouri Commission on Human Rights, she failed to indicate whether she is pursuing a claim under the Missouri Human Rights Act. To the extent plaintiff intended to do so, and in light of the Court's dismissal of the federal claims in this action, the Court declines to exercise supplemental jurisdiction over any remaining state law claims, pursuant to 28 U.S.C. § 1367(c).